

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID GORDON OPPENHEIMER, and  
PERFORMANCE IMPRESSIONS LLC,

19-cv-8573

Plaintiffs,

- against -

**COMPLAINT**

THE MASTERS SCHOOL,

ECF CASE

Defendant.  
-----X

Plaintiffs, DAVID OPPENHEIMER and PERFORMANCE IMPRESSIONS LLC, by  
their attorneys, EDWARD C. GREENBERG, LLC, allege as follows:

**PARTIES**

1. Plaintiff, DAVID GORDON OPPENHEIMER (hereinafter “OPPENHEIMER”) is an individual who is actively engaged and engages in the business of licensing photography in the State of New York and elsewhere in the United States, and who resides in Buncombe County, North Carolina.

2. Plaintiff, PERFORMANCE IMPRESSIONS LLC (hereinafter “PI”) is a foreign limited liability company organized and existing under the laws of the State of North Carolina, and located in Asheville, North Carolina.

3. Defendant THE MASTERS SCHOOL (hereinafter “Defendant” or “TMS”), is a private coeducational boarding school and day college preparatory school located in the Southern District of New York with an address at 49 Clinton Avenue in Dobbs Ferry, New York 10522.

**JURISDICTION AND VENUE**

4. This is a civil action for copyright infringement.

5. Jurisdiction is conferred upon this Court by 28 U.S.C. Section 1338.

6. Venue in the Southern District of New York is proper, pursuant to 28 U.S.C. 1400.

**FACTS COMMON TO ALL CLAIMS**

7. Plaintiff OPPENHEIMER was, and still is, a noted and respected professional photographer.

8. OPPENHEIMER has over the years done business through his own name as well as in the form and style of “PERFORMANCE IMPRESSIONS LLC”, a North Carolina company in good standing.

9. Both OPPENHEIMER and PI are listed as rights holders on the Certificate of Registration for the image that is the subject of the within action (see Exhibit “B” hereto).

10. OPPENHEIMER and PI are hereinafter referred to individually and collectively as “Plaintiffs”.

11. OPPENHEIMER is a noted and respected professional photographer who earns his livelihood from the creation and licensing of his images to permitted third-party licensees for compensation, as well as from selling prints of his photographs.

12. PI is a professional photography company that earns its income from the creation and licensing of OPPENHEIMER’s images to permitted third-party licensees for compensation, as well as from selling prints of such photographs.

13. That Plaintiff OPPENHEIMER is a successful professional photographer with many years of experience and a considerable reputation.

14. Plaintiff PI is a successful photography company with a considerable reputation.

15. Plaintiffs’ photographs have appeared in *inter alia* Rolling Stone, MSNBC, MTV, AOL, and FUSE.

16. The subjects of Plaintiffs’ photography include President Bill Clinton, Bob Dylan, Bruce Springsteen, Carlos Santana, and Paul McCartney, among countless other instantly

recognizable persons and places.

THE IMAGE

17. Plaintiff, OPPENHEIMER, in 2014, commissioned a helicopter to fly around New York City, wherein he took an aerial photograph of the Whitestone section of the Queens borough of New York City (hereinafter, the “Subject Image” or the “Image”, a copy of which is annexed hereto as **Exhibit “A”**).

18. Plaintiffs are the sole creators of and hold the copyright in the Subject Image, and duly registered same with the United States Copyright Office on January 13, 2014, registration number VAu 1-157-006 (copies of the relevant pages of the registration certificate are annexed hereto at **Exhibit “B”**).

19. Said copyright registration was filed under the author’s full name, David Gordon Oppenheimer, with rights and permissions allocated both to OPPENHEIMER and PI.

20. Plaintiffs marked and published the Subject Image with his copyright management information on the bottom right corner of the Subject Image, stating “© 2014 David Oppenheimer”.

21. That Subject Image was/is valuable in the marketplace.

THE UNAUTHORIZED USES OF PLAINTIFFS’ IMAGE BY DEFENDANT

22. The Subject Image was/is valuable to Defendant.

23. TMS is a private coeducational boarding school and college preparatory day school located in Westchester County, New York, just north of New York City.

24. TMS offers a program called “CITYterm”, which it describes as “an intensive, experience-based semester school for high school juniors and seniors... from independent, public and charter schools across the country and around the world”.

25. According to TMS’ website, cityterm.org, CITYterm accepts thirty students to attend

each semester.

26. Upon information and belief, CITYterm is a member of the Semester School Network and is accredited through TMS.

27. Upon information and belief, TMS markets and promotes its CITYterm worldwide.

28. CITYterm students live on TMS' 96 acre campus and spend every other day in New York City.

29. CITYterm offers an Urban Core curriculum that draws on and incorporates the environments of New York City.

30. TMS has used the Subject Image to market, promote and brand its CITYterm program.

31. TMS further offers a two-day "Neighborhood Study" event, targeted at parents and New York City alumni.

32. Upon information and belief, the "Neighborhood Study" event includes presentations, reception, and walking tours.

33. TMS has used the Subject Image to market, promote and brand its "Neighborhood Study" events.

34. The cost of tuition at TMS for the 2019-2020 academic year is \$62,000 for its Upper School Five-Day Boarding, \$72,000 for its Upper School Seven-Day Boarding, \$49,000 for its Upper School Day program, and \$49,000 for its Middle School Day program.

35. The cost of tuition to CITYterm for the 2019-2020 academic year is \$34,000

36. Defendant published the Subject Image, inter alia, at <https://securedata2.finalsite.com/cf51/mastersny/data/news/thumbs/317.large.jpg?v=ts20151028131426>.

37. Plaintiff previously informed defendant of the aforesaid infringing use of his image and demanded that TMS cease and desist same.

38. Plaintiffs and TMS entered into a confidential settlement agreement, dated September 13, 2017 (hereinafter the “Settlement Agreement”).

39. TMS has actual knowledge that it has no license, authorization or consent to use the Subject Image.

40. TMS has actual knowledge that it must cease and desist any and all uses of the Subject Image.

41. Notwithstanding, TMS has failed to remove the image from <https://securedata2.finalsite.com/cf51/mastersny/data/news/thumbs/317.large.jpg?v=ts20151028131426> (a copy of such use is annexed hereto at Exhibit “C”).

42. On March 11, 2019, plaintiff, through his counsel, notified TMS, via its counsel, of its continued unauthorized use of his Subject Image (hereinafter the “March 2019 Notice”).

43. A copy of the March 2019 Notice is not annexed hereto as said letter references confidential terms of the Settlement Agreement.

44. Despite the March 2019 Notice, TMS has failed to cease use of the Subject Image.

45. Indeed, since plaintiff’s March 2019 Notice to TMS, TMS has utilized the Subject Image in new unauthorized uses.

46. TMS has extensively and prominently displayed the Subject Image on its website [cityterm.org](http://cityterm.org).

47. TMS has published the Subject Image at <https://www.cityterm.org/about-us> (a copy of such use is annexed hereto at Exhibit “C”).

48. TMS has published the Subject Image at <https://www.cityterm.org/about-us/mission> (a copy of such use is annexed hereto at Exhibit “C”).

49. TMS has published the Subject Image at <https://www.cityterm.org/about-us/where-we-are> (a copy of such use is annexed hereto at Exhibit “C”).

50. TMS has published the Subject Image at <https://www.cityterm.org/about-us/where-we-are/directions> (a copy of such use is annexed hereto at Exhibit “C”).

51. TMS has published the Subject Image at <https://www.cityterm.org/about-us/who-we-are> (a copy of such use is annexed hereto at Exhibit “C”).

52. TMS has published the Subject Image at <https://www.cityterm.org/about-us/who-we-are/authorship-seminars> (a copy of such use is annexed hereto at Exhibit “C”).

53. TMS has published the Subject Image at <https://www.cityterm.org/about-us/employment> (a copy of such use is annexed hereto at Exhibit “C”).

54. TMS has published the Subject Image at <https://www.cityterm.org/about-us/contact-us> (a copy of such use is annexed hereto at Exhibit “C”).

55. TMS has published the Subject Image at <https://www.cityterm.org/about-us/just-the-facts> (a copy of such use is annexed hereto at Exhibit “C”).

56. TMS has published the Subject Image at <https://www.cityterm.org/admissions> (a copy of such use is annexed hereto at Exhibit “C”).

57. TMS has published the Subject Image at <https://www.cityterm.org/admissions/apply> (a copy of such use is annexed hereto at Exhibit “C”).

58. TMS has published the Subject Image at <https://www.cityterm.org/admissions/apply/who-applies> (a copy of such use is annexed hereto at Exhibit “C”).

59. TMS has published the Subject Image at <https://www.cityterm.org/admissions/apply/applying-to-cityterm> (a copy of such use is annexed hereto at Exhibit “C”).

60. TMS has published the Subject Image at <https://www.cityterm.org/admissions/apply/your-application> (a copy of such use is annexed hereto

at Exhibit “C”).

61. TMS has published the Subject Image at <https://www.cityterm.org/admissions/apply/our-college-list> (a copy of such use is annexed hereto at Exhibit “C”).

62. TMS has published the Subject Image at <https://www.cityterm.org/admissions/tuition-and-financial-aid> (a copy of such use is annexed hereto at Exhibit “C”).

63. TMS has published the Subject Image at <https://www.cityterm.org/admissions/sending-schools> (a copy of such use is annexed hereto at Exhibit “C”).

64. TMS has published the Subject Image at <https://www.cityterm.org/admissions/request-more-info> (a copy of such use is annexed hereto at Exhibit “C”).

65. TMS has published the Subject Image at <https://www.cityterm.org/admissions/upcoming-presentations> (a copy of such use is annexed hereto at Exhibit “C”).

66. TMS has published the Subject Image at <https://www.cityterm.org/our-philosophy> (a copy of such use is annexed hereto at Exhibit “C”).

67. TMS has published the Subject Image at <https://www.cityterm.org/our-philosophy/the-research> (a copy of such use is annexed hereto at Exhibit “C”).

68. TMS has published the Subject Image at <https://www.cityterm.org/our-philosophy/the-research/suggested-reading> (a copy of such use is annexed hereto at Exhibit “C”).

69. TMS has published the Subject Image at <https://www.cityterm.org/our-philosophy/interdisciplinary--project-based> (a copy of such use is annexed hereto at Exhibit “C”).

70. TMS has published the Subject Image at <https://www.cityterm.org/our-philosophy/leadership--collaboration> (a copy of such use is annexed hereto at Exhibit “C”).

71. TMS has published the Subject Image at <https://www.cityterm.org/our->

[philosophy/metacognition--authentic-assessment](#) (a copy of such use is annexed hereto at Exhibit “C”).

72. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/curriculum> (a copy of such use is annexed hereto at Exhibit “C”).

73. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/curriculum/urban-core> (a copy of such use is annexed hereto at Exhibit “C”).

74. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/curriculum/urban-core/brooklyn-bridge-project> (a copy of such use is annexed hereto at Exhibit “C”).

75. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/curriculum/urban-core/grand-central-winter-unit> (a copy of such use is annexed hereto at Exhibit “C”).

76. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/curriculum/urban-core/sustainable-waterfronts> (a copy of such use is annexed hereto at Exhibit “C”).

77. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/curriculum/additional-courses> (a copy of such use is annexed hereto at Exhibit “C”).

78. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/curriculum/independent-study> (a copy of such use is annexed hereto at Exhibit “C”).

79. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/integrated-living--learning> (a copy of such use is annexed hereto at Exhibit “C”).

80. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/integrated-living--learning/using-new-york-city> (a copy of such use is annexed hereto at Exhibit “C”).



81. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/integrated-living--learning/weekend-happenings> (a copy of such use is annexed hereto at Exhibit “C”).

82. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/community-expectations> (a copy of such use is annexed hereto at Exhibit “C”).

83. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/community-expectations/major-policies> (a copy of such use is annexed hereto at Exhibit “C”).

84. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/community-expectations/new-york-city-safety> (a copy of such use is annexed hereto at Exhibit “C”).

85. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/community-expectations/leaves-and-permissions> (a copy of such use is annexed hereto at Exhibit “C”).

86. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/college-process> (a copy of such use is annexed hereto at Exhibit “C”).

87. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/college-process/college-day> (a copy of such use is annexed hereto at Exhibit “C”).

88. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/before-you-arrive> (a copy of such use is annexed hereto at Exhibit “C”).

89. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/before-you-arrive/enrollment-forms> (a copy of such use is annexed hereto at Exhibit “C”).

90. TMS has published the Subject Image at <https://www.cityterm.org/cityterm->

[experience/before-you-arrive/packing-list](#) (a copy of such use is annexed hereto at Exhibit “C”).

91. TMS has published the Subject Image at <https://www.cityterm.org/cityterm-experience/pictures-of-the-week> (a copy of such use is annexed hereto at Exhibit “C”).

92. TMS has published the Subject Image at <https://www.cityterm.org/alumni> (a copy of such use is annexed hereto at Exhibit “C”).

93. TMS has published the Subject Image at <https://www.cityterm.org/alumni/alumni-events> (a copy of such use is annexed hereto at Exhibit “C”).

94. TMS has published the Subject Image at <https://www.cityterm.org/alumni/alumni-profiles> (a copy of such use is annexed hereto at Exhibit “C”).

95. TMS has published the Subject Image at <https://www.cityterm.org/alumni/alumni-profiles/alumni-profile-archives> (a copy of such use is annexed hereto at Exhibit “C”).

96. TMS has published the Subject Image at <https://www.cityterm.org/alumni/alumni-council> (a copy of such use is annexed hereto at Exhibit “C”).

97. TMS has published the Subject Image at <https://www.cityterm.org/alumni/bridges-alumni-magazine> (a copy of such use is annexed hereto at Exhibit “C”).

98. TMS has published the Subject Image at <https://www.cityterm.org/alumni/bridges-alumni-magazine/submit-to-class-notes> (a copy of such use is annexed hereto at Exhibit “C”).

99. TMS has published the Subject Image at <https://www.cityterm.org/alumni/update-your-info> (a copy of such use is annexed hereto at Exhibit “C”).

100. TMS has published the Subject Image at <https://www.cityterm.org/giving> (a copy of such use is annexed hereto at Exhibit “C”).

101. TMS has published the Subject Image at <https://www.cityterm.org/news-detail?pk=1263594&fromId=269871> (a copy of such use is annexed hereto at Exhibit “C”).

102. TMS has published the Subject Image at <https://www.cityterm.org/news->

[detail?pk=1263594&fromId=269872](#) (a copy of such use is annexed hereto at Exhibit “C”).

103. TMS has published the Subject Image at [https://bbk12e1-cdn.myschoolcdn.com/ftpimages/1175/news/thumb\\_news1263594\\_1265833.jpg](https://bbk12e1-cdn.myschoolcdn.com/ftpimages/1175/news/thumb_news1263594_1265833.jpg) (a copy of such use is annexed hereto at Exhibit “C”).

104. The uses of the Subject Image by TMS as complained of herein are willful and done so with actual notice of the fact that the uses are not permitted and indeed prohibited.

105. The Subject Image, as published by TMS, contains plaintiff’s watermark “© 2014 David Oppenheimer”, providing TMS with clear actual notice that plaintiff is the copyright holder in the Subject Image.

106. TMS knew that it had no authorization or right to use the Subject Image on any website or promotional materials, or for any purpose whatsoever.

107. Notwithstanding, TMS utilized the Subject Image as complained of herein with at least reckless disregard for plaintiffs’ rights.

108. That the full nature and extent of all infringing uses by defendant of the Subject Image are unknown to Plaintiffs, as of this writing, said information being within the sole knowledge, custody, and control of Defendant.

109. That such details and information are expected to be ascertained through discovery in this action.

110. The above described uses of the Subject Image by Defendant commercially benefits the Defendant.

111. Upon information and belief, Defendant purposely selected the Subject Image to include on its website.

112. Upon information and belief, Defendant purposely selected the Subject Image to include on its website in order to appeal to its target audience.

113. Upon information and belief, Defendant purposely selected the Subject Image to portray a visual connection and association between TMS, which is located in Westchester County on 96 acres, and the dense populous and urban environment of New York City.

114. Upon information and belief, Defendant knew and had actual knowledge that it lacked Plaintiffs' license, authorization and consent to use the Subject Image as complained of herein.

115. Defendant never sought, nor obtained, a license, authorization or consent from either of the plaintiffs to use the Subject Image for any purpose, whatsoever.

116. No one on behalf of defendant ever sought, or obtained, a license, authorization or consent from either of the plaintiffs to use the Subject Image in the manners complained of herein.

117. Neither of Plaintiffs ever granted Defendant any license, authorization or consent to use any of the Subject Image as complained of herein.

118. Defendant used the Subject Image for its own economic advantage and to the detriment of Plaintiffs.

119. Defendant failed to cease and desist its uses of the Subject Image.

120. Defendant has failed to disclose the full nature of its uses of the Subject Image.

121. Defendant has failed to compensate Plaintiffs for their uses of the Subject Image.

122. Pursuant to Federal Rule 11, Plaintiffs have sought to obviate judicial intervention and the filing of suit.

123. Notwithstanding the March 2019 Notice, defendant has ignored same,

continuing to infringe upon plaintiffs' copyright, and indeed commencing new infringements of plaintiff's Subject Image.

124. Plaintiffs are committed to protecting their copyright in the Subject Image.

125. Plaintiffs actively pursue and defend infringements of their intellectual property in various districts in the Federal Courts, and otherwise.

126. That Defendant has no defenses at law to the claims set forth herein.

127. Paragraphs "1" through "126" are incorporated by reference with respect to each of the below claims for relief.

**FIRST CLAIM FOR RELIEF**  
**Copyright Infringement**  
**Under Section 501-505 of the Copyright Act**

128. The use of Plaintiffs' Subject Image by the Defendant, in connection with cityterm.org was and is without either of Plaintiffs' authorization, license or consent.

129. That, upon information and belief, the aforementioned acts of Defendant constitute federal statutory copyright infringement under Section 501 of the Copyright Act in violation of the rights granted to Plaintiffs as copyright holder.

130. That, upon information and belief, Defendant's use of the Subject Image was willful, intentional and in bad faith.

131. That, upon information and belief, Defendant's use of the Subject Image in violation of Plaintiffs' copyright was negligent in that it knew or should have known that it was without a license for the use(s) complained of herein.

132. That, upon information and belief, Defendant has actual and/or constructive knowledge and/or through the exercise of ordinary business care and/or the examination of public records, knew or should have known that either of Plaintiffs held the copyright in the Subject Image, that Defendant

never had a license, consent, or authorization by either Plaintiff for the use of Plaintiffs' Subject Image on its website by Defendant, and that any such use would be in violation of Plaintiffs' copyright.

133. That as a result of Defendant's acts, Plaintiffs have been and will continue to be damaged in an amount as yet to be determined.

134. That as a result of Defendant's copyright infringement of Plaintiffs' Subject Image, Plaintiffs are entitled to damages, attorneys' fees and costs under Section 504 and 505 of the Copyright Act, 17 U.S.C. Section 101 et., seq., and as an alternative to statutory damages, Plaintiffs, at their election prior to judgment is entitled to recover their actual damages and any additional profits of the Defendant, attributable to the infringement as under 17 U.S.C. Sections 504 (a)-(b).

135. Plaintiffs are similarly entitled to an injunction under 17 U.S.C. 502, permanently enjoining and prohibiting the Defendant from utilizing the Subject Image in any manner.

### **JURY DEMAND**

136. That Plaintiffs request a trial by jury of all issues.

**WHEREFORE**, Plaintiffs demand judgment as against the Defendant as follows:

**ON THE FIRST CLAIM FOR RELIEF-** (A) Award to Plaintiffs their actual damages incurred as a result of Defendant(s)' infringement(s), and all profits realized as a result of its infringement(s), in amounts to be determined at trial; or (B) in the alternative, at Plaintiffs' election, award to Plaintiffs the maximum statutory damages pursuant to 17 U.S.C. § 504 for each separate and distinct act of infringement, and for an order of injunction permanently

enjoining and prohibiting the Defendant from employing or utilizing in any manner or media whatsoever, including all future uses, sales, transfers, assignments, or licensing of any and all of Plaintiffs' copyrighted images, pursuant to 17 U.S.C. § 502 and for an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;

Prejudgment interest on all sums due;

And such other and further relief as this Court may deem just and proper inclusive of any and all relief or remedies allowable by the statutes referenced above or applicable hereinabove.

Dated: White Plains, New York  
September 16, 2019

Yours, etc.,

s/Edward C. Greenberg (EG 5553)  
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